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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RASHAD E. CARTER,

Real Party in Interest.

E048307

(Super.Ct.No. BLF005013)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. William Lebov, Judge. (Retired Judge of the Yolo Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Petition granted.

Rod Pacheco, District Attorney, and Jacqueline C. Jackson, Deputy District Attorney, for Petitioner.

No appearance for Respondent.

Gary Windom, Public Defender, and Kelsi Guerra, Deputy Public Defender, for Real Party in Interest.

In this matter we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

First, in considering the sufficiency of the evidence at a preliminary hearing to support a charge, we are only concerned with finding enough evidence to justify a “strong suspicion” that a crime has been committed and that defendant has committed it. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 252.) This standard, of course, is far different—far less stringent—than that applied to the evidence needed to sustain a conviction.

Next, we disagree with the trial court’s view that a “street gang” charge or allegation is inappropriate if the defendant is incarcerated—that is, he or she is not “on the streets.” In this case, for example, the evidence was sufficient to justify a belief that members of criminal street gangs as defined in Penal Code section 186.22, subdivision (f), continue to operate and conduct themselves as members of a street gang while incarcerated, and also that the tentacles of the gang reach both into prison from the streets, and into the streets from prison. We also suggest, without deciding, that relatively peaceful inmates deserve protection from violent gangs in the same manner as do free residents on the streets. Accordingly, insofar as the ruling was

based on the belief that the “street gang” law could not apply to defendant as an inmate, the trial court erred.

We also find that, given the relatively low “bar,” the evidence was sufficient to establish both that real party was a member of a criminal street gang, and that his possession of a weapon was intended to benefit that gang. The witness’ testimony in these respects was properly based on reliable hearsay, including, with respect to the predicate offenses, evidence stemming from court files. (See *In re Alexander L.* (2007) 149 Cal.App.4th 605.)

Accordingly, the trial court erred in granting real party’s motion, and the petition for writ of mandate is granted.

DISPOSITION

Let a peremptory writ of mandate issue, directing the Superior Court of Riverside County to vacate its order granting real party’s motion to dismiss the substantive “criminal street gang” charge (Pen. Code, § 186.22, subd. (a)) and the “criminal street gang” enhancement (§ 186.22, subd. (b)), and to enter a new order denying that motion.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

The previously ordered stay is dissolved.

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MILLER
J.

We concur:

RAMIREZ
P. J.

GAUT
J.